Decision **DRAFT DECISION OF ALJ THOMAS (Mailed 2/15/2005)**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Joint Application of Southern California Gas Company (U 904 G) and San Diego Gas & Electric Company (U 902 M) for Authority to Continue Funding of Low Emission Vehicle Programs.	Application 02-03-047 (Filed March 25, 2002)
Application of Southern California Edison Company (U 338-E) to Extend the Operation of its Electric Vehicle Adjustment Clause Mechanism and Related Accounts Until the Date of the Commission's Final Decision in Southern California Edison's Test Year 2003 General Rate Case Proceeding.	Application 02-03-048 (Filed March 25, 2002)
Application of Pacific Gas and Electric Company for Review of and Authorization for Recovery of Costs Relating to Its Low Emission Vehicle Program for 2002 through 2005. (U 39 E)	Application 02-03-049 (Filed March 25, 2002)

OPINION ON CONTENTS OF UTILITY LOW EMISSION VEHICLE PROGRAM APPLICATIONS

I. Summary

This decision specifies the contents of the applications that Pacific Gas and Electric Company (PG&E), San Diego Gas & Electric Company (SDG&E), Southern California Edison Company (SCE) and Southern California Gas Company (SoCalGas) should file in seeking future funding for their Low

Emission Vehicle (LEV) programs. Decision (D.) 03-10-086 approved prior requests for LEV funding, but ordered a process to refine the contents of the foregoing utilities' (IOUs) applications.

II. Background

A. History of LEV Programs

The utilities' LEV programs are designed to develop and support motor vehicles powered by electricity and natural gas. We approved IOU ratepayer funding for LEVs in 1993 in D.93-07-054, after the Legislature enacted Pub. Util. Code § 740.3 *et seq.* The statute provides that the Commission should work with other state agencies, air quality management districts, the motor vehicle industry and the IOUs to facilitate the use of electric power and natural gas to fuel LEVs. The statute prohibits the Commission from passing funding for such programs through to ratepayers unless the programs are in the ratepayers' interest. In 1999, the Legislature amended Pub. Util. Code § 740.8 to provide that "interests of ratepayers, short- or long-term, mean direct benefits that are specific to ratepayers in the form of *safer, more reliable, or less costly gas or electrical service*."[1]

As described in D.03-10-086, the IOUs' LEV programs have three facets. First, the IOUs share information they have gained as operators of their own LEV fleets with other actual or potential fleet owners. This information sharing is the key focus of the IOUs' "customer education" activities. Second, they evaluate new LEV products to determine their impact on the energy grids they operate. This appears to be their principal activity aimed at enhancing system reliability. Third, they provide information on safe fueling and charging techniques to third parties who use IOU-owned fueling stations and charge electric vehicles.

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[1] Emphasis added.

B. D.03-10-086 Requirements

D.03-10-086 allowed IOUs to use the current LEV application process until the end of 2005. Noting that IOU funding for LEV programs after that date was not a guarantee, the decision set up a process to develop criteria for judging whether the Commission would authorize funding for LEV programs in the future:

> We would like the parties, and any other interested stakeholders, to work together to come up with specific criteria that will be used to judge whether LEV programs should receive continued funding in the future, while also addressing whether or not these programs should be included in the utility cost-of-service proceedings or whether they should be discontinued because they have been duplicated by market efforts. The forum for this shall be a workshop, hosted by the Energy Division, to be held no later than April 2004. The parties will then jointly file in this Docket any proposals resulting from this workshop (or workshops if necessary). The assigned ALJ should then establish, through ruling, a schedule for comments and reply comments and any other record development, as needed.
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> . . . .
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> The workshops are required because there seems to be a lack of clarity on behalf of the parties with respect to what they need to prove in order to have funding extended in future applications. We anticipate responding to the workshop proposal by developing guidelines that would apply when the utilities apply for funding for the next round of discretionary LEV programs. This procedure will help facilitate the coordination envisioned in PU Code § 740.3(a).[2]

We set up workshops because, in the words of Resolution G-3322,

[2] D.03-10-086, *mimeo.,* pp. 33-34 (footnoted supplied).

[W]e never intended ratepayer-funded LEV programs to be permanent or become part of the IOUs' entrenched operations:

> [O]ur intent at the time we issued the current authorization was to fund the utilities' programs for a set period of time *with the expectation that at some point further subsidization of the LEV market by utility ratepayers would not be warranted.* As stated in Findings of Fact No. 3 in D.93-07-054, "It is not clear how long a utility presence is needed to provide a bridge to a sustainable competitive market for LEVs.[3]

C. Workshop and Report

In accordance with the Commission's direction, the Energy Division held a workshop on April 29, 2004, and on June 22, 2004, several parties to this proceeding submitted a *Joint Report on Low Emission Vehicle Program Workshop* (Report). PG&E supplemented that submission on August 11, 2004. The signatories who supported the Report in its entirety were PG&E, Bay Area Clean Air Task Force, California Air Resources Board, California Electric Transportation Coalition, California Energy Commission, CALSTART, Clean Energy, INFORM, Sacramento Municipal Utility District, SDG&E, South Coast Air Quality Management District, SCE and SoCalGas. Western States Petroleum Association (WSPA) declined to sign on to a portion of the Report, and the remaining workshop participants – Southern California Generating Coalition (SCGC) and TIAX (a fuel cell company) did not sign on to the Report at all.

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[3] Resolution G-3322, Jan. 23, 2002, at 9, available at http://www.cpuc.ca.gov/PUBLISHED/FINAL RESOLUTION/12757.htm (emphasis added).

The Report took the following positions:

1. The proposed LEV application appended to D.03-10-086 requires too much detail and would burden the IOUs. The Commission should adopt a simplified format.
2. The IOUs should be able to make future LEV funding requests as part of their general rate cases (GRCs) or cost of service (COS) proceedings, rather than as a separate application.
3. The Commission need not develop new guidelines for determining whether ratepayer funding of LEV-related research, development and demonstration (RD&D) work is appropriate.
4. Only when there are no longer any LEVs in the hands of utilities may the IOUs' LEV programs be terminated.
5. Compliance with existing law is adequate to assure fair competition between IOUs and third parties operating in the LEV market.
6. IOU participation in a broad range of industry organizations will ensure IOU efforts in the LEV market do not duplicate other available products and services.
7. Future LEV funding should be continued as long as the IOUs and their customers use LEVs and customers receive direct benefits from such programs.

D. Comments on Workshop Report

1. WSPA

On September 16, 2004, WSPA filed comments on the Report. WSPA makes the following points:

1. The IOUs' citation to "a new, stronger emphasis in California on the need to encourage LEVs"[4] is irrelevant to whether utility ratepayers should pay for LEV activities.

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[4] Report at 9.

General state policy does not justify imposing such costs on ratepayers.

2. IOU participation in LEV-related advocacy groups should be limited to communicating utility experience with LEVs and should not include activities to promote LEV use or influence public policy.

3. The Report's criteria for determining whether LEV programs should receive continued funding are too broad:

    - The IOUs' customer education should be limited to utility vehicles and refueling stations, and not include general information on the operation of LEVs that should be provided by manufacturers or dealers.

    - IOU efforts to inform customers about the environmental and societal benefits of LEVs should not be funded by ratepayers unless they are focused on utility LEV use and infrastructure.

    - IOUs should not be allowed to "inform customers about the economic operation of LEVs and related infrastructure"[5] unless such information is limited to training in the use of utility infrastructure and in the economic operation of vehicles as it impacts the utility and the efficient use of energy.

2. SCGC

SCGC filed comments on the report on September 20, 2004. SCGC is concerned that the Report addresses matters beyond the scope of and in conflict with D.03-10-086. SCGC notes that it is irrelevant whether LEVs are a good thing for California; rather, the issue is whether ratepayers should fund utility LEV programs: "the workshop was not to be on whether the utilities' discretionary LEV programs should continue. It was to be on specific criteria for determining

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[5] *Id.* at 25.

whether *ratepayer funding* should continue and on the appropriate forum for deciding ratepayer funding issues."[6] SCGC's specific comments are as follows:

1. The Report's conclusion that funding for LEVs may terminate only when there are no longer any LEVs in the hands of utilities or their customers contradicts Commission decisions on the subject. Decision 03-10-086, D.98-12-028, D.95-11-035 and D.93-07-054 all make clear that ratepayer funded LEV programs are not supposed to be permanent.
2. The Report conflicts with D.03-10-086 by recommending that funding requests for LEV programs should be considered in GRCs. Electric generators bear a substantial portion of gas utility LEV costs. Because the Commission has viewed gas utility LEV costs as being atypical costs that require special treatment, the costs should be examined in separate stand-alone proceedings, and not in GRCs.[7]

III. Discussion

A. Content of Applications for Discretionary LEV Funding

1. Discretionary vs. Mandatory Funding

This decision is only concerned with the IOUs' discretionary LEV programs, as distinguished from their mandatory programs. Discretionary activities are not the subject of statutory clean air requirements, but rather are carried out by the IOUs at their own discretion. They include customer service, training, research and development. Discretionary activities are the subject of this decision.

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[6] *[SCGC] Comment on Workshop Report*, filed Sept. 20, 2004, at 2 (emphasis in original).

[7] TIAX did not provide input on the Report.

We review mandatory LEV program activities in each utility's GRC or COS proceeding. Mandatory activities include the acquisition of alternative fuel use fleet vehicles pursuant to federal law, operation and maintenance costs associated with use of alternative fuel use fleet vehicles and associated infrastructure, infrastructure (fueling facilities and related equipment) needed to support alternative fuel use fleet vehicles, employee training and instruction necessary for the use of alternative fuel use fleet vehicles, and accounting for the costs of these mandatory activities. These activities are outside the scope of this decision.

2. Statutory and D.03-10-086 Requirements

The statute governing utility LEV programs is the logical place to begin our analysis of what the criteria should be for continued ratepayer funding. The statute prohibits the Commission from passing funding for such programs through to ratepayers unless they are in the ratepayers' interest. In 1999, the Legislature amended Pub. Util. Code § 740.8 to provide that "interests of ratepayers, short- or long-term, mean direct benefits that are specific to ratepayers in the form of safer, more reliable, or less costly gas or electrical service."

Our mandate here according to D.03-10-086 is to "[respond] to the workshop proposal by developing guidelines that would apply when the utilities apply for funding for the next round of discretionary LEV programs."

3. Annual Report Template Appropriate as Template for Applications

In setting up the workshop, the Energy Division proposed that the template D.03-10-086 adopted for IOU reporting on their LEV programs also serve as the form IOUs would use to submit their applications. In response, the IOUs complain that the template requires that they provide too much information and that it therefore is burdensome. They have, however, already used the template to make reports on their 2004 programs. The information provided – consisting of a few boxes of sample LEV materials the IOUs issued, and many brochures and other material from third parties in the LEV business – gives us a picture of what the IOUs do with their LEV funding. Assembling this material – most of which is not authored by the IOUs themselves – is not overly burdensome.

We therefore agree that the template the IOUs currently use for reporting should also be used for their annual applications. They should simply modify their program descriptions to be forward-looking in their applications (while they are backward-looking in the IOUs' reporting on the prior year's activities).

The template is straightforward and closely tracks the statute. As we stated in D.03-10-086, "The Annual Report [template] requires that the IOUs identify how each program activity relates to safety, reliability or less costly gas or electric service, report on how many people were served, submit program materials, and otherwise establish that they are meeting the requirements of D.95-11-035 and this decision."

All the template does is ask IOUs to explain how each element of their LEV programs matches up to the statutory requirement of safer, more reliable, or less costly gas or electrical service. First, it requires that the IOUs provide a one or two paragraph description of LEV program activities for the year. Next, it requires a list or table that summarizes the program budget, expenditures, goals and achievements for the year. The template then requires that the utility subdivide the information into the statutory categories, as follows:

1. Safety Related Expenditures

For each safety related activity, provide the following data:

- A description of each activity (subject matter, delivery method, material provided, how it relates to safety, etc.);

- Number and description of persons (*e.g.*, fleet customer, residential customer, noncore customer, etc.) to whom safety information delivered;
- Number of staff persons involved in each activity and time spent on each;
- To the Energy Division care of Energy Division Director submit two copies of all material, including but not limited to safety instructions, flyers, brochures, posters, program announcements, newsletters, website posting, websites, etc. (NOTE: Websites and website postings need not be printed and sent to ED, but please provide list of URLs and brief description of each website and web posting);
- Quantity produced of each piece of material;
- Method(s) of distribution and approximate quantities distributed by each method, and
- Expenditures on each activity and totaled.

2. Reliability Related Expenditures

For each reliability related activity, provide the following data:

- A description of each activity (subject matter, description of how activity relates to reliability of electric or gas system, materials developed or obtained, etc.);
- Number of staff persons involved in each activity and time spent on each;
- To the Energy Division care of Energy Division Director submit two copies of all materials developed or obtained, including but not limited to studies or analyses of impact of new LEV technology on load, grid or reliability, and
- Expenditures on each activity and totaled.

3. Expenditures for Activity Leading to Less Costly Gas or Electric Service

For each activity that will lead to less costly gas or electric service, provide the following data:

- A description of each activity (subject matter, delivery method, material provided, how it will lead to less costly gas or electric service, etc.);
- Number of staff persons involved in each activity and time spent on each;
- To the Energy Division care of Energy Division Director submit two copies of all materials developed or obtained, including but not limited to studies or analyses of how program activity will reduce rates, and
- Expenditures on each activity and totaled.

4. Other Expenditures

- A description of accomplishments not captured within the foregoing section and how they relate to safer, more reliable, or less costly gas or electrical service;
- A description of each activity (subject matter, delivery method, material provided, how it will accomplish Commission-articulated goals for ratepayer-funded IOU LEV programs, etc.);
- Number of staff persons involved in each activity and time spent on each;
- To the Energy Division care of Energy Division Director submit two copies of all materials developed or obtained, including but not limited to studies or analyses of how program activity will accomplish Commission-articulated goals for ratepayer-funded LEV programs, etc., and
- Expenditures on each activity and totaled.

If the discretionary LEV programs were authorized by statute or Commission decision to continue indefinitely, then perhaps this detail might not be necessary. Just the contrary is the case: both the Commission and the Legislature have made clear that such programs should not continue forever. Thus, all we are asking the IOUs to do is conform their program applications to what the statute requires, with enough detail to enable the Commission to evaluate the IOUs' claims. The IOUs shall therefore use the template attached to D.03-10-086 to prepare each year's discretionary LEV application.

5. Funding Not Eligible for Ratepayer Funding

(1) Education on Societal Benefits of Clean Air/LEVs

We agree with WSPA and SCGC that activities that educate the public generally about the societal benefits of clean air or LEVs are not eligible for ratepayer funding. As we stated D.95-11-035, "we cannot approve . . . utility programs solely because they may help improve air quality. . . ."[8] We reiterated this point in D.03-10-086:

> We stated in D.95-11-035 that "we cannot approve . . . utility programs solely because they may help improve air quality . . . ."[9] This point is uncontested. The corollary from this is that improved air quality is but one of the deciding factors. The IOUs bear the burden of proving that their programs meet the criteria we have adopted in our LEV decisions.[10]

Thus, educating customers generally that clean air and LEVs are a good thing is not something IOUs may do with ratepayer funding. These general societal goals should be funded by sources other than utility ratepayers.

(2) LEVs in IOU's Possession

We reject the Report's proposition (item 4 on the list above) that "Only when there are no longer any LEVs in the hands of utilities may the IOUs' LEV programs be terminated." Similarly, we reject the notion that IOUs should continue to receive ratepayer funding for discretionary LEV programs "as long

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[8] 1995 Cal. PUC LEXIS 978, at *91.

[9] *Id.*

[10] D.03-10-086, *mimeo.*, p. 20.

as the IOU and its customers use LEVs and customers receive direct benefits from such programs." (Item 7 above.) IOUs are free to offer LEV programs indefinitely, but they may not presume indefinite ratepayer finding. Our inquiry here is whether and how ratepayers should continue to pay for these activities.

It is a fair assumption that from here on, IOUs will always have LEVs in their possession and that IOU customers will always use LEVs. If we were to adopt the foregoing criteria, ratepayer-funded discretionary LEV funding would never end, contrary to statute and all our prior decisions.

Thus, the IOUs may not justify continued ratepayer funding simply because "LEVs are in the hands of utilities" or "the IOU and its customers use LEVs." It is not even relevant whether ratepayers "receive direct benefits from such programs." Such benefits could be unrelated to safety, reliability or low cost and in that case, they would not be justifiable under § 740.3. To receive continued ratepayer funding, the IOUs must tie requests for funding to the ratepayer goals of safety, reliability and low cost.

(3) Research, Development and Demonstration Work

The Report proposes that the Commission refrain from developing new guidelines for determining whether ratepayer funding of LEV-related research, development and demonstration (RD&D) work is appropriate. In D.95-11-035, we prohibited activities designed to lead directly to the development of new commercial products: "Their development should be supported by the firms that could profit from their commercialization. . . ." [11] We further stated that, "the use of regulated monopoly funds for the development of a private business

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[11] D.95-11-035, 1995 Cal. PUC LEXIS 978, at *126.

in this emerging market raises the potential for unfair competition."[12] The LEV statute states that "The commission's policies shall … ensure that utilities do not unfairly compete with nonutility enterprises." Pub. Util. Code § 740.3(c).

We did not find any problem with the IOUs' RD&D expenditures in D.03-10-086, and no party has shown a need for detailed rules. Therefore, we adopt the Report's recommendation, and do not develop further rules in this area. We opt instead to rely on the proscriptions in the statute and our prior decisions.

(4) Customer Education

We find too vague WSPA's critique that 1) the IOUs' customer education should be limited to utility vehicles and refueling stations, and not include general information on the operation of LEVs that should be provided by manufacturers or dealers; and 2) the IOUs should not be allowed to "inform customers about the economic operation of LEVs and related infrastructure"[13] unless such information is limited to training in the use of utility infrastructure and in the economic operation of vehicles as it impacts the utility and the efficient use of energy. Any requirement that IOUs parse funding in this way would be too difficult to enforce. As long as the IOUs' educational efforts further the goals of ratepayer safety, reliability of the electric and gas systems, and control of ratepayer costs, we will not further circumscribe the educational activities in which the utilities engage.

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[12] *Id.* at *140-41.

[13] *Id.* at 25.

B. GRC vs. Separate LEV Proceeding

D.03-10-086 decided that utilities' applications for discretionary LEV funding should be considered in stand-alone applications:

> While we have moved the mandatory aspects of their LEV programs to the GRCs, we do not believe that we should consider the discretionary LEV programs in that forum…. We decline to move LEV discretionary funding into the IOUs' GRCs or cost of service proceedings.[14]

By the same token, D.03-10-086 suggested that the workshop should re-examine this issue:

> We would like the parties, and any other interested stakeholders, to work together to come up with specific criteria that will be used to judge whether LEV programs should receive continued funding in the future, while also addressing whether or not these programs should be included in the utility cost-of-service proceedings or whether they should be discontinued because they have been duplicated by market efforts.

If we were to relegate discretionary LEV services to GRCs or COS proceedings, they would quickly be lost in the minutiae of those enormous proceedings and might become permanent IOU offerings. That is not the statute's intent, as we discuss above. The best way to ensure that LEV programs only receive funding for as long as they meet the statutory intent is to require stand-alone applications. We rule that discretionary services must remain part of a separate application process subject to the mandates of Pub. Util. Code § 740.3 *et seq.*

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[14] D.03-10-086, *mimeo.*, pp. 31-32.

IV. Assignment of Proceeding

Geoffrey F. Brown is the Assigned Commissioner and Sarah R. Thomas is the assigned Administrative Law Judge in these proceedings.

V. Comments on Draft Decision

The draft decision of the Administrative Law Judge in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(g)(1) and Rule 77.7 of the Rules of Practice and Procedure. Comments were filed on ___________, and reply comments were filed on __________________.

Findings of Fact

1. Discretionary LEV program activities are not the subject of statutory clean air requirements, but rather are carried out by the IOUs at their own discretion. They include customer service, training, research and development. Discretionary activities are the only subject of this proceeding.

2. Mandatory LEV activities include the acquisition of alternative fuel use fleet vehicles pursuant to federal law, operation and maintenance costs associated with use of alternative fuel use fleet vehicles and associated infrastructure, infrastructure (fueling facilities and related equipment) needed to support alternative fuel use fleet vehicles, employee training and instruction necessary for the use of alternative fuel use fleet vehicles, and accounting for the costs of these mandatory activities. Mandatory activities are outside the scope of this proceeding.

3. It is not overly burdensome for the IOUs to assemble the materials for the report template attached to D.03-10-086.

4. The report template attached to D.03-10-086 is straightforward and closely tracks Pub. Util. Code § 740.3.

Conclusions of Law

1. IOUs may not fund discretionary LEV programs with ratepayer funds unless such programs are in the ratepayers' interest. The interests of ratepayers, short- or long-term, mean direct benefits that are specific to ratepayers in the form of safer, more reliable, or less costly gas or electrical service.

2. The IOUs should use the template attached to D.03-10-086 to prepare each year's discretionary LEV application.

3. Ratepayer finding of IOUs' discretionary LEV programs may not continue indefinitely.

4. IOUs may not use discretionary LEV program funds to educate the public generally about the societal benefits of clean air or LEVs.

5. It is not a proper criterion for determining whether to provide ratepayer funding of LEVs under § 740.3 that LEVs are still in the hands of utilities or that the IOUs and their customers use LEVs. Such criteria would justify indefinite ratepayer funding, which the Legislature and prior Commission decisions did not intend.

6. We need not develop new guidelines to determine whether to approve ratepayer funding of LEV-related RD&D. Sufficient guidance appears in existing Commission decisions and the LEV statute.

7. We should continue to evaluate discretionary LEV funding in stand-alone applications, rather than as part of utilities' GRCs or cost of service proceedings to ensure that we examine whether the programs meet the § 740.3 requirements.

O R D E R

IT IS ORDERED that:

1. Pacific Gas and Electric Company (PG&E), San Diego Gas & Electric Company (SDG&E), Southern California Edison Company (SCE) and Southern California Gas Company (SoCalGas) (collectively utilities or IOUs) shall not use ratepayer funds for Low Emission Vehicle (LEV) programs unless they provide direct benefits that are specific to ratepayers in the form of safer, more reliable, or less costly gas or electrical service.

2. The IOUs shall use the template attached to Decision 03-10-086 to prepare each year's discretionary LEV funding application.

3. The IOUs shall not use discretionary LEV program funds to educate the public generally about the societal benefits of clean air or LEVs.

4. The IOUs may not base future requests for discretionary LEV funding on the assertion that LEVs are still in the hands of utilities or that the IOUs and their customers use LEVs.

5. We will continue to evaluate discretionary LEV funding in stand-alone applications, rather than as part of the foregoing utilities' general rate cases or cost of service proceedings.

6. Any IOU seeking discretionary LEV funding for 2006 shall file its application no later than May 6, 2005. The IOUs shall, in advance of that date, meet and confer to develop a common format including standardized budget forms and program details forms (if necessary to supplement the D.03-10-086 template) for such applications.

7. These proceedings are closed.

This order is effective today.

Dated ____________________, at San Francisco, California.